RECORDS AND BRIEFS

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No. 16-605

# In the Supreme Court of the United States

TOWN OF CHESTER, NEW YORK, PETITIONER

*v.*

LAROE ESTATES, INC.

*ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT*

## BRIEF FOR THE UNITED STATES AS AMICUS CURIAE SUPPORTING PETITIONER

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## QUESTION PRESENTED

Whether a person seeking to intervene as of right pursuant to Federal Rule of Civil Procedure 24(a)(2) must satisfy Article III standing requirements.

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## BRIEF FOR THE UNITED STATES AS AMICUS CURIAE SUPPORTING PETITIONER

### INTEREST OF THE UNITED STATES

This case presents the question whether Article III standing is required to intervene as of right pursuant to Federal Rule of Civil Procedure 24(a)(2). The United States is frequently a party to litigation in which private entities seek to intervene. The United States also regularly intervenes in private law suits, under a variety of federal statutes and rules, to protect any government interest implicated by such litigation. The United States therefore has a substantial interest in the standards applied by district courts in ruling on motions to intervene.

### STATEMENT

1. This case arises from the abandoned MareBrook real-estate development project in petitioner Town of Chester, New York. See Pet. App. 2a, 22a-23a. In 2000, land-developer Steven Sherman (who is now deceased,

*id.* at 2a) applied to petitioner for subdivision approval while he was buying the nearly 400-acre parcel of land that he planned to develop as a residential subdivision. *Id.* at 22a; see *Sherman* v. *Town of Chester*, 752 F.3d 554, 557 (2d Cir. 2014). Sherman's development plans were stymied, however, when petitioner adopted new zoning regulations every year from 2003 through 2007 and took various other actions that prevented approval of the MareBrook project. *Sherman*, 752 F.3d at 557.

In 2003, while Sherman was trying to obtain the zoning approval necessary for development of his project, he entered into a purchase agreement with respondent Laroe Estates, Inc., a real-estate-development company. Pet. App. 2a-3a. Under that agreement, respondent would purchase three parcels in the proposed MareBrook subdivision in exchange for $60,000 for each lot approved for development within those three parcels once Sherman obtained subdivision approval from petitioner. *Id.* at 3a. The agreement also required respondent to make a total of $6 million in interim payments while Sherman sought subdivision approval. *Ibid.* Those payments were secured by a mortgage encumbering all of the property proposed for development. *Ibid.* In the first year of the agreement, respondent made a total of $2.5 million in payments. *Ibid.*

In 2013, TD Bank, which held the senior mortgage on the property proposed for development, initiated foreclosure proceedings. Pet. App. 3a. Hoping to salvage the development project despite the foreclosure, respondent and Sherman entered into a new arrangement. *Id.* at 3a-4a. That agreement provided that the $2.5 million respondent had already paid to Sherman, plus any amount respondent would pay to

settle Sherman's obligations to TD Bank, would constitute the purchase price of the entire property. *Id.* at 4a. Respondent was unable to settle TD Bank's claim, and TD Bank took possession of the property in 2014. *Ibid.* Although the 2013 agreement authorized respondent to terminate that agreement if it was unable to settle TD Bank's claim, respondent chose not to do so. *Ibid.*

2. a. In 2008, Sherman filed suit against petitioner in federal district court, asserting (in relevant part) a federal regulatory takings claim based on petitioner's repeated amendments to its zoning laws as well as other actions that had prevented Sherman from developing his property. Pet. App. 22a-23a.[1] Sherman voluntarily dismissed that suit in 2012 and filed this action in state court several days later. *Id.* at 23a-24a. Petitioner then removed the case to federal district court. *Id.* at 24a. In March 2013, the district court dismissed Sherman's regulatory takings claim against petitioner, holding that the claim was unripe because Sherman had not received a final decision concerning development of his property and because seeking such a decision would not be futile. *Id.* at 23a; see *Sherman*, 752 F.3d at 557. The Second Circuit reversed and remanded, holding that Sherman's takings claim was ripe and timely filed. *Sherman*, 752 F.3d at 561-564, 568-569; Pet. App. 2a-3a, 24a-25a.

b. While the case was on remand, respondent filed a motion to intervene as of right pursuant to Federal Rule of Civil Procedure 24(a)(2). Rule 24(a)(2) pro-

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[1] Sherman's estate was substituted as the plaintiff after Sherman's death during the pendency of the litigation. Pet. App. 21a n.2. Consistent with the opinions below, this brief will refer to the individual plaintiff.

vides that, "[o]n timely motion, [a district] court must permit anyone to intervene who * * * claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest." Fed. R. Civ. P. 24(a)(2). Respondent argued that, as a mortgage holder ("contract vendee"), it had a sufficient equitable interest in the relevant property to assert a takings claim against petitioner. Pet. App. 54a. Respondent's complaint in intervention purported to "track[] the Cause of Action pleaded by Sherman," J.A. 157 n.5, seeking just compensation for "a regulatory taking of [its] property * * * under * * * *Penn Central Transportation Co. v. New York City*, 438 U.S. 104 (1978)," J.A. 160. Respondent sought an award of compensation for "the taking of [its] interest in the subject real property." J.A. 162.

The district court denied respondent's motion to intervene as of right. Pet. App. 54a-57a. The court concluded that permitting respondent to intervene would be "futile" because respondent had failed to state a legally sufficient claim against petitioner. *Id.* at 57a. The court found respondent's claim to be legally insufficient based on circuit precedent holding that a contract vendee like respondent lacks standing to assert a takings claim. *Id.* at 55a-57a.

c. The court of appeals vacated and remanded. Pet. App. 1a-19a. The court of appeals rejected what it understood to be the district court's holding that "a party seeking to intervene as of right must independently have standing." *Id.* at 6a. The court of appeals stated that "'there [is] no need to impose the

standing requirement upon [a] proposed intervenor' where '[t]he existence of a case or controversy [has] been established' in the underlying litigation." *Id.* at 7a (quoting *United States Postal Serv.* v. *Brennan*, 579 F.2d 188, 190 (2d Cir. 1978)) (brackets in original). Acknowledging that this Court has not yet decided whether an intervenor must have standing in its own right, the court of appeals viewed this Court as having "*sub silentio* permitted parties to intervene in cases that satisfy the 'case or controversy' requirement without determining whether those parties independently have standing." *Id.* at 8a (citing *McConnell* v. *FEC*, 540 U.S. 93, 233 (2003), overruled on other grounds by *Citizens United* v. *FEC*, 558 U.S. 310 (2010)). The court of appeals thus concluded that Article III does not bar respondent's proposed intervention.

The court of appeals further held that a plaintiff-intervenor need not have an independent, stand-alone claim in order to intervene as of right under Rule 24(a)(2). Pet. App. 9a-10a. The court relied on this Court's decision in *Trbovich* v. *United Mine Workers*, 404 U.S. 528 (1972), in which an individual who lacked an independent cause of action was permitted to intervene at least to the extent he asserted the same legal theories and sought the same relief as the original plaintiff. Pet. App. 9a. The court of appeals held that whether respondent had an independent cause of action was not relevant to whether it could intervene pursuant to Rule 24(a)(2) so long as respondent "seeks relief that does not differ substantially from that sought by Sherman." *Id.* at 10a. The court of appeals remanded the case to the district court for

an evaluation of whether respondent satisfied the requirements of Rule 24(a)(2). *Id.* at 10a-11a, 13a-18a.

## SUMMARY OF ARGUMENT

Federal Rule of Civil Procedure 24(a)(2) is best construed to incorporate the requirements of Article III standing, so that a litigant must at a minimum establish his Article III standing in order to qualify for intervention as of right under the terms of the Rule. That approach reflects the most natural reading of the Rule, promotes judicial efficiency, and avoids the need to decide whether the Constitution itself requires a litigant to establish the elements of Article III standing in order to intervene as of right.

A. Article III limits the exercise of a federal court's jurisdiction to cases and controversies in which a litigant has been injured in a concrete and particularized manner by a defendant's allegedly unlawful action. A plaintiff must establish standing with respect to each of its claims and each form of relief sought. The scope of a federal court's jurisdiction is therefore prescribed by the extent to which a litigant has established standing. And because the requisite adversity must exist at every stage of the litigation, a federal appellate court cannot exercise jurisdiction unless a party with Article III standing has pursued an appeal.

This Court has made clear, however, that as long as one plaintiff has established standing to bring a particular suit, a federal court need not inquire into the standing of co-plaintiffs who assert the same legal claims and seek the same relief. Similarly, on appeal, although a federal appellate court can act only at the behest of an appellant with a concrete ongoing interest in the litigation, the court need not decide whether other appellants also have standing. As long

as a litigant who has not demonstrated standing does not seek to expand the scope of the litigation beyond that justified by a party with established standing, Article III's limits on federal jurisdiction are satisfied.

The same basic principles apply to intervenors. Some actions that an intervenor might seek to take would require a showing of standing, but others would not. In principle, a court could choose to inquire into an intervenor's independent standing at the point of intervention or could choose to delay that inquiry until a point (if one arises) when an intervenor seeks to take some particular step for which standing is constitutionally required. Although the drafters of the Federal Rules could permissibly have adopted either approach, Rule 24(a)(2) as written is best construed to require a threshold showing of standing for intervention as of right.

B. Federal Rule of Civil Procedure 24(a)(2) requires a district court to grant a timely motion to intervene when a movant can establish (a) "an interest relating to the property or transaction that is the subject of the action," (b) a risk that "disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest," and (c) inadequate representation of the movant's interest by the existing parties. Fed. R. Civ. P. 24(a)(2). Those requirements map comfortably onto the constitutional requirements of standing and should be interpreted to require a showing of standing.

By requiring a movant to demonstrate that he has an interest in the property or transaction that is the subject of the litigation and that his interest is at risk of impairment absent intervention, Rule 24(a)(2) requires a movant to establish that he has a legally pro-

tected interest in the subject of the action and that, as a result of the action, he is at risk of suffering an actual and imminent injury that is both concrete and particularized. The Rule's requirements that a putative intervenor demonstrate that his interest may be impaired by disposition of the action and that his interest is not adequately represented by existing parties are also naturally construed to require a showing of causation and redressability.

Construing Rule 24(a)(2) to call for a threshold showing that satisfies the requirements for Article III standing is consistent with the most natural reading of the Rule and with principles of efficient judicial administration. That interpretation also obviates the need to decide whether Article III would require a showing of standing as a prerequisite to intervention. Such a construction is particularly appropriate in light of the Rule's requirement that an intervenor establish that his interests are not adequately protected by existing parties. A litigant who makes such a showing is particularly likely to alter the contours of the existing litigation in a way that would ultimately require an inquiry into the intervenor's standing. And, like any party to a suit, an intervenor may take steps that will slow the progress of the suit, increase the costs associated with the suit, or extend the life of the suit beyond what the original parties intended. Requiring a showing of standing before requiring parties and the judicial system to accept such burdens is consistent with Article III's respect for the autonomy of the persons most likely to be affected by a judicial order and largely obviates the need for later inquiries into whether Article III authorizes the intervenor and the court to take particular steps.

## ARGUMENT

### FEDERAL RULE OF CIVIL PROCEDURE 24(a)(2) REQUIRES A LITIGANT SEEKING TO INTERVENE AS OF RIGHT TO ESTABLISH ARTICLE III STANDING

Courts, including this Court, have often framed the question presented here as "whether a party seeking to intervene before a district court must satisfy not only the requirements of Rule 24(a)(2), but also the requirements of Art[icle] III." *Diamond* v. *Charles*, 476 U.S. 54, 69 (1986). That formulation reflects an implicit premise that a litigant can satisfy the requirements of Federal Rule of Civil Procedure 24(a)(2) without establishing that it has Article III standing. That premise is mistaken. Rule 24(a)(2) is best construed to *incorporate* the requirements of Article III standing, so that a litigant must establish his standing in order to qualify for intervention as of right under the terms of the Rule.

That approach reflects the most natural reading of Rule 24(a)(2)'s text, which requires the movant to show, *inter alia*, that it has "an interest relating to the property or transaction that is the subject of the action." Fed. R. Civ. P. 24(a)(2). The term "interest" in Rule 24(a)(2) is best construed to mean a stake in the litigation that is at least sufficiently concrete and specific to give rise to Article III standing. That approach also promotes judicial efficiency by largely obviating the need for further Article III inquiries if and when the intervenor subsequently attempts to expand the dimensions of the suit beyond its contours as framed by the original parties. And construing Rule 24(a)(2) to incorporate the requirements for standing under Article III eliminates the need to determine whether the Constitution itself makes satis-

faction of those requirements a prerequisite to intervention in a federal-court suit.

### A. Article III Standing Is Required For Some But Not All Forms Of Participation In A Federal-Court Action

1. Article III of the United States Constitution limits the reach of "[t]he judicial Power" to "Cases" and "Controversies." U.S. Const. Art. III, § 2, Cl. 1. "No principle is more fundamental to the judiciary's proper role in our system of government than the constitutional limitation of federal-court jurisdiction to actual cases or controversies." *DaimlerChrysler Corp.* v. *Cuno*, 547 U.S. 332, 341 (2006) (citations omitted). To invoke the jurisdiction of a federal court, a plaintiff must allege (and ultimately prove) that it has suffered an actual or imminent individualized injury to a "legally protected interest," that the injury is "fairly traceable" to the defendant's challenged conduct, and that the injury can be redressed by a favorable decision. *Arizona Christian Sch. Tuition Org.* v. *Winn*, 563 U.S. 125, 134 (2011) (brackets, ellipsis, and citation omitted).

"[T]he law of Art[icle] III standing is built on a single basic idea—the idea of separation of powers." *Allen* v. *Wright*, 468 U.S. 737, 752 (1984), abrogated on other grounds by *Lexmark Int'l, Inc.* v. *Static Control Components, Inc.*, 134 S. Ct. 1377 (2014); see *Clapper* v. *Amnesty Int'l USA*, 133 S. Ct. 1138, 1146 (2013). "The several doctrines that have grown up to elaborate th[e]" case-or-controversy "requirement are 'founded in concern about the proper—and properly limited—role of the courts in a democratic society.'" *Allen*, 468 U.S. at 750 (quoting *Warth* v. *Seldin*, 422 U.S. 490, 498 (1975)). Article III standing principles reflect the traditional understanding that the exercise

of judicial power "is legitimate only in the last resort, and as a necessity in the determination of real, earnest and vital controversy." *Valley Forge Christian Coll.* v. *Americans United for Separation of Church & State, Inc.*, 454 U.S. 464, 471 (1982) (quoting *Chicago & Grand Trunk Ry. Co.* v. *Wellman*, 143 U.S. 339, 345 (1892)).

The requirement that a plaintiff allege a concrete injury ensures that federal courts will exercise the judicial power only at the behest of persons who will be concretely affected by the court's decision. Standing requirements thus reflect "a due regard for the autonomy of those most likely to be affected by a judicial decision," *Diamond*, 476 U.S. at 62, by "restrict[ing]" the "exercise of judicial power" "to litigants who can show [an] 'injury in fact' resulting from the action which they seek to have the court adjudicate," *Valley Forge*, 454 U.S. at 473. "The requirement that a party seeking review must allege facts showing that he is himself adversely affected * * * serve[s] as at least a rough attempt to put the decision as to whether review will be sought in the hands of those who have a direct stake in the outcome." *Sierra Club* v. *Morton*, 405 U.S. 727, 740 (1972).

2. "[S]tanding is not dispensed in gross." *Lewis* v. *Casey*, 518 U.S. 343, 358 n.6 (1996). Rather, a plaintiff must separately demonstrate standing with respect to each claim and each form of relief sought. *DaimlerChrysler Corp.*, 547 U.S. at 352; *Friends of the Earth, Inc.* v. *Laidlaw Envtl. Servs., Inc. (TOC)*, 528 U.S. 167, 185 (2000). Article III standing requirements would not effectively confine federal courts to their constitutionally assigned role if a plaintiff's showing of injury from one alleged violation allowed it to chal-

lenge other actions of the defendant that caused it no concrete harm. See, *e.g.*, *Lewis*, 518 U.S. at 357. And, if the plaintiff ultimately prevails, "[t]he remedy must of course be limited to the inadequacy that produced the injury in fact that the plaintiff has established." *Ibid.* Those requirements ensure that federal courts decide issues of law, and exercise coercive power, only to the extent necessary to determine and enforce the rights of persons having a concrete stake in the outcome.

Even when the requisite adversity has been shown to exist in the district court, a federal appellate court cannot exercise jurisdiction unless a party with Article III standing has pursued an appeal. In *Diamond*, an individual was permitted to intervene to support the State of Illinois in defending the constitutionality of one of the State's laws. 476 U.S. at 56-58. When the State declined to appeal to this Court from an adverse Seventh Circuit ruling, the defendant-intervenor filed an appeal. *Id.* at 61. This Court dismissed the appeal, holding that the intervenor did not have standing to pursue the appeal on his own because he lacked a direct stake in the dispute. *Id.* at 61-71.

The Court in *Diamond* observed that, if the State (the original defendant) had "sought review, this Court's Rule [governing participation on appeal] ma[de] clear that [the individual], as an intervening defendant below, also would be entitled to seek review, enabling him to file a brief on the merits, and to seek leave to argue orally." 476 U.S. at 64. The Court explained, however, that "this ability to ride 'piggyback' on the State's undoubted standing exists only if the State is in fact an appellant before the Court; in the absence of the State in that capacity, there is no

case for [the intervenor] to join." *Ibid.* In finding that the intervenor lacked standing to appeal, the Court observed, *inter alia*, that the intervenor's "desire that the [challenged state law] as written be obeyed" was insufficient to establish standing because "Article III requires more than a desire to vindicate value interests." *Id.* at 66. Because the intervenor could not establish a judicially cognizable injury resulting from the Seventh Circuit's decision, *id.* at 68-71, the Court dismissed the appeal for want of jurisdiction, *id.* at 71.

The Court in *Diamond* stated that it "need not decide today whether a party seeking to intervene before a district court must satisfy not only the requirements of Rule 24(a)(2), but also the requirements of Art[icle] III." 476 U.S. at 68-69. The Court's decision makes clear, however, that an intervenor who seeks to invoke the jurisdiction of an appellate court when no other party has done so must demonstrate Article III standing. At that point, "due regard for the autonomy of those most likely to be affected by a judicial decision" requires that "the decision to seek review must be placed 'in the hands of those who have a direct stake in the outcome.'" *Id.* at 62 (quoting *Sierra Club*, 405 U.S. at 740); see *Wittman* v. *Personhuballah*, 136 S. Ct. 1732, 1737 (2016); *Hollingsworth* v. *Perry*, 133 S. Ct. 2652, 2661 (2013); *Arizonans for Official English* v. *Arizona*, 520 U.S. 43, 64, 65 (1997) (explaining that Article III standing requirements "must be met by persons seeking appellate review" as well as by original plaintiffs, and that "[a]n intervenor cannot step into the shoes of the original party unless the intervenor independently 'fulfills the requirements of Article III'") (quoting *Diamond*, 476 U.S. at 68);

cf. *ASARCO Inc.* v. *Kadish*, 490 U.S. 605, 617-619 (1989) (holding that, although Article III standing requirements do not apply in state-court litigation, a person who seeks this Court's review of a state-court judgment must demonstrate injury resulting from that judgment).

3. For the foregoing reasons, an Article III court can act only at the behest of a litigant who is injured either by the defendant's allegedly unlawful conduct or (in the case of federal appellate jurisdiction) by a lower court's judgment. It does not follow, however, that every person who seeks to participate as a plaintiff in multi-party federal litigation must invariably demonstrate injury in fact. The Court has repeatedly recognized that, so long as one plaintiff has established its standing to bring a particular suit, a federal court need not inquire into the standing of co-plaintiffs who assert the same legal claims and seek the same relief. *Massachusetts* v. *EPA*, 549 U.S. 497, 518 (2007); *Rumsfeld* v. *Forum for Academic & Institutional Rights, Inc.*, 547 U.S. 47, 52 n.2 (2006); *Bowsher* v. *Synar*, 478 U.S. 714, 721 (1986); *Secretary of the Interior* v. *California*, 464 U.S. 312, 319 n.3 (1984); *California Bankers Ass'n* v. *Shultz*, 416 U.S. 21, 44-45 (1974).[2]

The Court has applied the same approach to questions of standing on appeal. A federal appellate court can act only at the behest of an appellant who has a concrete ongoing interest in the litigation. See pp. 12-

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[2] This Court has permitted a person to intervene as a plaintiff even when no statute authorized him to initiate his own cause of action, as long as he limited his claims to those asserted by a plaintiff that did have a cause of action. *Trbovich* v. *United Mine Workers*, 404 U.S. 528, 536-537 (1972).

13, *supra*. But where one appellant has made the requisite showing, the Court has found it unnecessary to decide whether additional appellants have standing as well. See, *e.g.*, *Horne* v. *Flores*, 557 U.S. 433, 446 (2009).

That approach is consistent with Article III's text, and it accords with common sense. If a dispute between opposing parties with concrete interests in the outcome otherwise qualifies as an Article III "Case[]" or "Controvers[y]," U.S. Const. Art. III, § 2, Cl. 1, the presence of an additional litigant, in and of itself, does not negate the requisite adversity. Most obviously, an amicus curiae that lacks Article III standing may present legal arguments to a court in the form of written submissions and may seek leave to participate in a hearing or oral argument. No one supposes that the participation of such a litigant negates the existence of an Article III "Case[]" or "Controvers[y]," *ibid.*, where one would otherwise exist. So long as the court resolves only those legal claims that are asserted by a plaintiff who has Article III standing, and enters only such relief as is appropriate to redress that plaintiff's injury, the court acts within the limits prescribed by the Constitution.

Article III does not require a different approach when multiple litigants are listed as plaintiffs and at least one is shown to have standing to sue. So long as a co-plaintiff does not seek to expand the range of claims or defenses before the court or request additional relief, its denomination as a party rather than as an amicus curiae does not violate Article III. An additional requirement that a court inquire into the standing of every litigant, including co-plaintiffs who assert the same claims and seek the same relief as a

plaintiff whose standing has been established, would burden already busy courts with an inquiry that could appropriately be left unaddressed in accordance with ordinary principles of constitutional avoidance. To be sure, a federal court has the *authority* to inquire into the standing of such a co-plaintiff if the court believes that such an inquiry would serve a useful purpose. But the court is *required* to verify a co-plaintiff's Article III standing only if and when the co-plaintiff seeks to take some step (*e.g.*, asserting a new legal claim or seeking additional relief) that would expand the range of claims or defenses before the court or increase the demands placed on other litigants.

4. As a constitutional matter, the same basic principles apply with respect to intervenors. Some actions that an intervenor might seek to take—such as injecting a new claim, seeking damages, or seeking injunctive relief that is broader than or different from the relief sought by the original plaintiff(s)—are permissible only if the intervenor establishes Article III standing. Other actions—such as presenting written or oral legal arguments supporting the claims of the original parties—would not require such a showing. Cf. *McConnell* v. *FEC*, 540 U.S. 93, 233 (2003) (finding it unnecessary to decide whether a defendant-intervenor had Article III standing because the intervenor's position was "identical" to that of the still-participating original defendant), overruled on other grounds by *Citizens United* v. *FEC*, 558 U.S. 310 (2010).

In principle, there are two basic approaches that courts could take to ensure that an intervenor who lacks Article III standing does not expand or alter the "Case[]" or "Controvers[y]" as framed by the original

parties. U.S. Const. Art. III, § 2, Cl. 1. First, courts could make standing a threshold requirement that the putative intervenor must satisfy in order to qualify for party status. Second, courts could choose instead to conduct the Article III inquiry only if and when the intervenor seeks to take some particular step for which standing is constitutionally required. For the reasons that follow, Federal Rule of Civil Procedure 24(a)(2) is best construed to mandate the first approach, and thus to make Article III standing a threshold requirement when a litigant moves to intervene as of right.

### B. Properly Construed, Rule 24(a)(2) Requires A Litigant Who Seeks To Intervene As Of Right To Establish Article III Standing

As explained above, litigants who lack Article III standing often seek to influence the outcome of federal litigation. The constitutional propriety of such participation depends on whether those litigants act within the contours of a "Case[]" or "Controvers[y]," U.S. Const. Art. III, § 2, Cl. 1, that has been initiated by a plaintiff with Article III standing, not on whether they are denominated parties or amici. As a matter of sound judicial administration, however, there are good reasons for treating Article III standing as a prerequisite to intervention as of right in a pending federal-court suit. Federal Rule of Civil Procedure 24(a)(2) is best read to impose such a requirement.

1. Federal Rule of Civil Procedure 24(a)(2) requires a district court to grant a timely motion to intervene when a movant can establish (a) that the putative intervenor has "an interest relating to the property or transaction that is the subject of the action," (b) that the putative intervenor "is so situated

that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest," and (c) that existing parties do not "adequately represent that interest." Fed. R. Civ. P. 24(a)(2). Those prerequisites map comfortably onto constitutional standing requirements and should be interpreted to require a showing that at least satisfies the requirements for Article III standing.[3]

a. The first element of Article III standing is that a "plaintiff must have suffered an injury in fact—an invasion of a legally protected interest which is (a) concrete and particularized, and (b) actual or imminent, not conjectural or hypothetical." *Lujan* v. *Defenders of Wildlife*, 504 U.S. 555, 560 (1992) (internal citations and quotation marks omitted). Rule 24(a)(2) likewise requires a putative intervenor as of right to establish "an interest relating to the property or transaction which is the subject of the action." *Donaldson* v. *United States*, 400 U.S. 517, 531 (1971) (citation omitted). This Court has described the "interest" that is "contemplated by Rule 24(a)(2)" as "a significantly protectable interest." *Ibid.* In this context, where a litigant seeks protection in the form of judicial process, Rule 24(a)(2)'s term "interest" is naturally understood to mean the type of "legally protected interest," *Lujan*, 504 U.S. at 560, that can form the basis of Article III standing and thereby authorize a federal court to exercise the judicial power.

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[3] Under Rule 24, a litigant seeking to intervene must file "a pleading that sets out the claim or defense for which intervention is sought." Fed. R. Civ. P. 24(c). That pleading should assist a court in assessing whether a litigant satisfies the requirements of Rule 24(a)(2), including standing under Article III.

Rule 24(a)(2)'s further requirements that the intervenor's interest "relat[e] to the property or transaction that is the subject of the action," and that the disposition of the action "may as a practical matter impair or impede the movant's ability to protect its interest," reinforce the connection between the Rule and Article III. Fed. R. Civ. P. 24(a)(2). By requiring an interest relating to a judicial proceeding that is already in progress, the Rule assures that the intervenor's injury is an *actual* injury, not one that is "conjectural or hypothetical." *Spokeo, Inc.* v. *Robins*, 136 S. Ct. 1540, 1548 (2016) (quoting *Lujan*, 504 U.S. at 560). The additional requirement of a potential "practical" impairment corresponds to the Article III requirement of an injury that is "concrete" rather than "abstract" and provides "the essential dimension of specificity to the dispute." *Schlesinger* v. *Reservists Comm. to Stop the War*, 418 U.S. 208, 220-221, 227 (1974). And the requirement that the suit may impair the intervenor's "ability to protect *its* interest," Fed. R. Civ. P. 24(a)(2) (emphasis added), ensures that its injury is particularized in the sense that it "affect[s] the [intervenor] in a personal and individual way," *Lujan*, 504 U.S. at 560 n.1, rather than in "some indefinite way in common with people generally," *Daimler-Chrysler*, 547 U.S. at 344 (citation omitted).

Rule 24(a)(2) is also naturally construed to incorporate the requirements of causation and redressability. A putative intervenor as of right must show that it "is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest." Fed. R. Civ. P. 24(a)(2). The Rule thus requires a demonstrated causal link between the intervenor's legally protected interest and

the litigation itself. That aspect of the Rule, and the separate required showing that "existing parties" cannot "adequately represent" the putative intervenor's interest, also ensure that intervention as of right is limited to litigants who will receive a tangible benefit if the court considers and accepts their legal arguments. *Ibid.*

b. In one respect, the type of injury that will satisfy Rule 24(a)(2) can sometimes differ from the type of injury that a plaintiff must show in order to initiate a suit. Whereas a plaintiff must show that it has suffered or will suffer actual injury as a result of the defendant's allegedly unlawful conduct, an intervenor can satisfy Rule 24(a)(2) by demonstrating that it may suffer actual injury as a result of the disposition of the action in which it seeks to intervene. Rule 24(a)(2) thus allows a litigant to intervene as a defendant if it can demonstrate, *inter alia*, that its interest would be "impair[ed] or impede[d]" by a judicial ruling in the *plaintiff's* favor, even though the intervenor has not been injured by the defendant's conduct. Fed. R. Civ. P. 24(a)(2). Such a putative intervenor must demonstrate in substance that it would have Article III standing to appeal if the plaintiff prevailed in the district court.

As explained above, however, a litigant's philosophical agreement with the correctness of a defendant's legal position is not sufficient to establish standing on appeal. Rather, to pursue a stand-alone appeal, a litigant must establish that the lower court's ruling subjects it to the sort of concrete and personal injury that Article III requires. A litigant who seeks leave to

intervene as a defendant under Rule 24(a)(2) should be required to make a comparable showing.[4]

2. By its plain terms, Rule 24(a)(2) requires a putative intervenor as of right to demonstrate "an interest relating to the property or transaction that is the subject of the action." Fed. R. Civ. P. 24(a)(2). The court of appeals did not question the district court's determination that respondent lacked Article III standing to pursue its current claims in a stand-alone suit. See Pet. App. 5a-9a. In remanding this case to allow the district court to determine whether respondent nevertheless has the requisite Rule 24(a)(2)

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[4] The United States regularly intervenes in private disputes to advance or defend important federal interests. This Court has long recognized that "[t]he obligations which [the United States] is under to promote the interest of all, and to prevent the wrongdoing of one resulting in injury to the general welfare, is often of itself sufficient to give it a standing in court." *In re Debs*, 158 U.S. 564, 584 (1895). That sovereign interest has been incorporated into a number of statutes that provide for participation by the United States in litigation affecting the interests of the United States. See 28 U.S.C. 517, 518, 2403(a); Fed. R. Civ. P. 24(b)(2). Where the United States seeks to intervene as of right, it may rely on its unique sovereign interest in ensuring and coordinating the proper enforcement of its laws—just as it could assert the same sovereign interest as a ground for initiating suit or appealing from an adverse judgment. See *Vermont Agency of Natural Res.* v. *United States ex rel. Stevens*, 529 U.S. 765, 771 (2000) (explaining that the United States suffers a cognizable "injury to its sovereignty arising from violation of its laws"); see also *Hollingsworth*, 133 S. Ct. at 2664 ("No one doubts that a State has a cognizable interest in the continued enforceability of its laws that is harmed by a judicial decision declaring a state law unconstitutional.") (citation and internal quotation marks omitted); *Diamond*, 476 U.S. at 64 ("The conflict between state officials empowered to enforce a law and private parties subject to prosecution under that law is a classic 'case' or 'controversy' within the meaning of Art[icle] III.").

"interest" in the subject matter of the suit, the court of appeals appeared to contemplate an inquiry that is similar to, but in some unspecified respect less demanding than, the inquiry that would be needed to ascertain whether respondent has Article III standing. See *id.* at 13a-17a. But if respondent were granted leave to intervene, and thereafter sought to assert a claim or seek relief different from those that Sherman has advanced (or if respondent sought to pursue a stand-alone appeal from an adverse district-court judgment on the merits), it would then be necessary to determine whether respondent actually has Article III standing.

There is no sound reason to interpret Rule 24(a)(2) as requiring the duplication of effort that such overlapping inquiries would entail. Rather, construing the Rule to require a threshold showing that satisfies the requirements for Article III standing is consistent with the most natural reading of the Rule's text and with principles of efficient judicial administration. That interpretation also obviates the need to decide whether Article III itself requires such a showing as a prerequisite to intervention as of right. Cf. *Southern Christian Leadership Conference* v. *Kelley*, 747 F.2d 777, 779 (D.C. Cir. 1984) (stating that Rule 24(a)(2) "impliedly refers not to *any* interest the applicant can put forward, but only to a legally protectable one," and that "[s]uch a gloss upon the rule is in any case required by Article III of the Constitution").

That approach is particularly appropriate in light of Rule 24(a)(2)'s separate requirement that the putative intervenor's asserted "interest" be one that "existing parties" cannot "adequately represent." Fed. R. Civ. P. 24(a)(2). A litigant who satisfies that requi-

rement is especially likely to seek to expand or alter the contours of the dispute between the existing parties in a way that would independently require an inquiry into Article III standing. The likelihood that such an inquiry will be required at some point during the action highlights the judicial-efficiency rationale for treating Article III standing as a required threshold showing when a litigant moves to intervene as of right.

3. A district court lacks discretion to exclude a putative intervenor that satisfies the requirements of Rule 24(a)(2). Rather, the Rule states that litigants who satisfy its requirements "must" be permitted to intervene. The court retains the ability to impose "appropriate conditions or restrictions responsive among other things to the requirements of efficient conduct of the proceedings." Fed. R. Civ. P. 24 advisory committee's note (1966) (Amendment) (28 U.S.C. App. at 823). In practice, however, intervenors as of right are generally permitted to participate in a case to the same extent as the original parties. 7C Charles Alan Wright et al., *Federal Practice and Procedure* § 1920, at 609 (3d ed. 2007).[5]

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[5] Petitioner's argument (Br. 15-32) that Article III requires an intervenor as of right to establish standing at the point of intervention is premised in part on an assumption that, once permitted to intervene under Rule 24(a)(2), an intervenor is entitled to do anything in the litigation that a plaintiff with standing can do—including adding a new claim or seeking a new form of relief—without an inquiry into the intervenor's independent standing. By its terms, Rule 24(a)(2) does not require that an intervenor be accorded the same treatment as a plaintiff with standing. We agree with petitioner, however, that if the effect of Rule 24(a)(2) intervention as of right were to preclude the district court from restricting the intervenor's litigation conduct once leave to inter-

Like any party to a suit, an intervenor may take steps that will slow the progress of the suit, increase the costs associated with the suit, or extend the suit's duration beyond what the original parties intended, such as by expanding discovery, complicating settlement negotiations, or influencing the original parties' decisions about whether to appeal. The legal system should not be made to bear such burdens except at the behest of a party with standing. As with plaintiffs who initiate suits in federal court, enforcement of standing requirements in this context reflects the traditional understanding of the proper judicial role and "a due regard for the autonomy of those persons likely to be most directly affected by a judicial order." *Valley Forge*, 454 U.S. at 473. And a threshold standing determination at the time of intervention will largely obviate the need for later inquiries into whether Article III authorizes the court to adjudicate particular claims or requests for relief that the intervenor asserts.

When an intervenor cannot establish the requisite concrete interest in and risk of harm from the pending litigation, it cannot intervene as of right under Rule 24(a)(2). In that situation, a district court has discretion pursuant to Rule 24(b) to grant a request for permissive intervention, so long as the putative intervenor does not seek to take an action that would require independent Article III standing as described above, see pp. 11-13, *supra*. Article III and efficiency concerns are less acute with respect to permissive intervention because a district court has discretion both to exclude an entity seeking to participate in that

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vene has been granted, the Constitution requires a demonstration of Article III standing as a threshold requirement for intervention.

capacity and to limit the scope of its participation if intervention is permitted. "Even highly restrictive conditions may be appropriately placed on a permissive intervenor, because such a party has by definition neither a statutory right to intervene nor any interest at stake that the other parties will not adequately protect or that it could not adequately protect in another proceeding." *Stringfellow* v. *Concerned Neighbors in Action*, 480 U.S. 370, 382 n.1 (1987) (Brennan, J., concurring in part and concurring in the judgment). But where a litigant asserts a right to participate in an action on substantially the same terms as the original parties, sound principles of judicial efficiency and constitutional avoidance support construing Rule 24(a)(2) to require that an intervenor establish Article III standing.

## CONCLUSION

The decision of the court of appeals should be reversed.

Respectfully submitted.

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[*] The Acting Solicitor General is recused in this case.